IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WRS, INC. d/b/a WRS MOTION PICTURE LABORATORIES, a corporation, Plaintiff, vs. PLAZA ENTERTAINMENT, INC., a corporation, ERIC PARKINSON, an individual, CHARLES von BERNUTH, an individual and JOHN HERKLOTZ, an individual, Defendants	Civil Action No. 2:00-2041 Judge Arthur J. Schwab

MOTION TO MODIFY ORDER OF FEBRUARY 20, 2007 ENTERING DEFAULT JUDGEMENT AS TO DEFENDANTS, ERIC PARKINSON, CHARLES VON BERNUTH, AND PLAZA ENTERTAINMENT, INC., TO EXPRESS THAT COUNTERCLAIMS WERE DISMISSED.

AND NOW comes, Plaintiff, WRS, Inc., by and through its counsel, Thomas E. Reilly, P.C., with the following Motion to Modify the Order entering Default Judgment against Defendants, Eric Parkinson, Charles von Bernuth and Plaza Entertainment, Inc., and aver as follows:

1. On or about February 20, 2007, this Court granted Summary Judgment in favor of Plaintiff, WRS, Inc., and against the Defendant, John Herklotz, and entered Default Judgments against Defendants, Parkinson, von Bernuth, and Plaza Entertainment, Inc.

2. The Court severed from this action the cross-claims filed by Defendant, John Herklotz, against Charles von Bernuth and Eric Parkinson.

3. The cross–claims were transferred to the United States District Court of California.

4. Following the entry of the Orders on February 27, 2007, the Court closed the case with the understanding of, at a minimum, the Court, WRS, and Herklotz, that the Orders

disposed of all matters between all parties and were therefore final under 28 U.S.C. §1291 and ripe for appeal.

5. Defendant, John Herklotz, filed an appeal of the to the Third Circuit from the Orders entering Judgment against him in which appeal both Herklotz and WRS have filed their respective Briefs.

6. On February 18, 2005, in conjunction with a Motion to Strike a Default, John Gibson for Parkinson and Plaza filed an Answer, Affirmative Defenses, and Counterclaim, at Case No. 03-1398, which was subsequently consolidated with this action. (03-1398 Doc. 30).

7. On May 25, 2001, Plaza filed an Answer and Counterclaim at Case No. 00-2041. (Doc. 23).

8. On October 29, 2003, von Bernuth filed and Answer, Affirmative Defenses, and Counterclaim at Case No. 03-1398 (Doc. 6)

9. WRS filed a Chapter 11 bankruptcy proceeding in the Western District of Pennsylvania on August 24, 2001 at Case NO. 01-27859-MBM and confirmed a Plan of Reorganization on June 23, 2005.

10. Neither Eric Parkinson, Plaza Entertainment, Inc., nor von Bernuth, sought relief from the automatic stay to pursue the Counterclaims against WRS.

11. As a matter of law, the confirmation of the Plan of Reorganization discharged WRS from any liability it might have had on the Counterclaims and enjoined the Defendants from further pursuing those counterclaims. 11 U.S.C. § 1141(d)(1)(A) and 524(a)(2).

12. By reason of the foregoing, although not expressly stated in the Order of February 20, 2007 entering Default Judgment against Eric Parkinson, Plaza Entertainment, Inc and

Charles von Bernuth, the Counterclaims were finally concluded, could not be pursued, and should have been dismissed.

WHEREFORE, WRS, Inc respectfully requests that the Court modify the Order entering Default Judgment against Eric Parkinson, Plaza Entertainment, Inc., and Charles von Bernuth, dated February 20, 2007 (Doc. 140), be modified to express that all of Defendants' Counterclaims are dismissed because any liability of WRS was discharged by confirmation of its Chapter 11 Plan on June 23, 2005 in the Western District of Pennsylvania Bankruptcy, Case No. 01-28759-MBM.

Respectfully submitted,

THOMAS E. REILLY, P.C.

BY: ____/s/ Thomas E. Reilly________

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CERTIFICATE OF SERVICE

I, Thomas E. Reilly, Esquire, hereby certify that a true and correct copy of WRS' Motion to Modify was delivered via first-class mail, postage pre-paid on the 2nd day of November, 2007, to the following:

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THOMAS E. REILLY, P.C.

BY: /s/ Thomas E. Reilly
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